United Nations CMW/C/KGZ/CO/1

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Distr.: General
22 May 2015

Original: English

Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Concluding observations on the initial report of Kyrgyzstan*

1. The Committee considered the initial report of Kyrgyzstan (CMW/C/KGZ/1) at its 273rd and 274th meetings (CMW/C/SR.273 and 274), held on 13 and 14 April 2015, and adopted, at its 287th meeting, held on 22 April 2015, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the initial report of the State party, which was prepared in response to the list of issues prior to reporting (CMW/C/KGZ/QPR/1). It also welcomes the additional oral information provided by the delegation that was headed by Guinara Iskakova, Permanent Representative of Kyrgyzstan to the United Nations in Geneva, and that comprised representatives from the Ministry of Labour, Migration and Youth, the Ministry of Justice, the Ministry of Foreign Affairs and the Permanent Mission of Kyrgyzstan to the United Nations Office and other international organizations in Geneva. The Committee appreciates the open and constructive dialogue held with the delegation.

3. The Committee notes that some countries where Kyrgyz migrant workers are employed are not parties to the Convention, which may constitute an obstacle to migrant workers' enjoyment of their rights under the Convention.

4. The Committee notes that in May 2015 the State party will enter the Eurasian Economic Union and that Kyrgyz migrant workers and members of their families will therefore have access to benefits under Eurasian Economic Union agreements.

B. Positive aspects

5. The Committee notes that the State party has concluded some bilateral and multilateral agreements at the regional and international levels, and encourages the conclusion of such agreements insofar as they promote and protect the rights of migrant

* Adopted by the Committee at its twenty-second session (13–24 April 2015).

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workers and members of their families. The Committee notes in particular the State party's ratification of or accession to:

(a) The International Labour Organization (ILO) Migration for Employment Convention (Revised), 1949 (No. 97) (September 2008);

(b) The Convention on the Legal Status of Migrant Workers and Members of Their Families, adopted by the States members of the Commonwealth of Independent States (November 2008);

(c) The Agreement on the Cooperation of the Commonwealth of Independent States in Combating Trafficking in Persons, Human Organs and Tissues of 2005 (December 2006);

(d) The Protocol to the Minsk Agreement (2000) on mutual visa-free travel of citizens of the Eurasian Economic Community (March 2005);

(e) The ILO Worst Forms of Child Labour Convention, 1999 (No. 182) (May 2004);

(f) The Agreement on Cooperation of the Commonwealth of Independent States on the Return of Minors to Their States of Residence (the Chisinau Agreement) of 2002 (May 2004).

6. The Committee welcomes the establishment of the Ministry of Labour, Migration and Youth (in 2012) and the adoption of Law No. 4 on Foreign Labour Migration (January 2006).

7. The Committee also welcomes the following institutional and policy measures:

(a) Regulations for the implementation of the order on the interaction of State bodies and other organizations in the "single window" system (October 2013);

(b) The long-term-employment programme to 2020, including the employment abroad programme (September 2013);

(c) The programme for social security and pension provision to citizens of Kyrgyzstan working in the Russian Federation as migrant workers (April 2013);

(d) The governmental programme to combat trafficking in persons in Kyrgyzstan for 2013 to 2016 (January 2013).

C. Principal subjects of concern, suggestions and recommendations

1. General measures of implementation (arts. 73 and 84)

Legislation and application

8. The Committee notes with concern that the definition of labour migrant in the State party's legislation is not in line with the Convention, as it includes only migrant workers who are documented or in a regular situation.

9. **The Committee recommends that the State party take the steps necessary to ensure that its national laws and policies are in line with the provisions of the Convention, including amending legislation to ensure protection of the rights of all migrant workers, both in regular and irregular situations, in accordance with the Convention. The Committee also recommends that the State party strengthen its efforts to improve the coordination among ministries and agencies at all levels of government for the effective implementation of the rights protected under the Convention.**

10. The Committee is concerned about the lack of information on the application of the Convention by domestic courts.

11. **The Committee invites the State party to provide information on the application of the Convention by domestic courts in its next periodic report.**

12. The Committee notes that the State party has not made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive and consider communications from States parties and individuals concerning violations of rights established by the Convention.

13. **The Committee recommends that the State party consider making the declarations provided for in articles 76 and 77 of the Convention.**

14. The Committee is concerned that the State party has not yet ratified or acceded to the ILO Migration Workers (Supplementary Provisions) Convention, 1975 (No. 143), the ILO Private Employment Agencies Convention, 1997 (No. 181) and the ILO Domestic Workers Convention, 2011 (No. 189).

15. **The Committee recommends that the State party consider ratifying or acceding to the above-mentioned instruments as soon as possible.**

16. The Committee is concerned that the Ombudsperson of Kyrgyzstan does not have a comprehensive mandate pertaining to the rights of migrant workers, and that the Office of the Ombudsperson lacks adequate financial and human resources to effectively discharge the mandate of the Ombudsperson.

17. **The Committee recommends that the State party provide the Ombudsperson of Kyrgyzstan with a broad mandate to promote and protect effectively the rights of migrant workers and members of their families under the Convention. The Committee also recommends that the State party provide the Office of the Ombudsperson with adequate support to enable it to discharge this mandate effectively.**

Data collection

18. While welcoming the efforts of the State party to collect information and statistical data on migration issues, the Committee is concerned by the lack of sufficient information on migration flows and on other migration-related issues. It regrets the lack of information on the various criteria required to evaluate the effective implementation of the Convention, in particular with regard to migrant women, unaccompanied migrant children and migrant workers both in and from the State party.

19. **The Committee recommends that the State party strengthen its efforts to ensure that the system for the compilation of migration-related statistics covers all aspects of the Convention and that detailed data is collected on the status of migrant workers in the State party. It encourages the State party to compile both qualitative and quantitative information and statistics that are disaggregated by sex, age, reason for entering and departing from the country and type of work performed. In cases where it is not possible to obtain precise information, for example, in the case of migrant workers in an irregular situation, the Committee would appreciate being provided with information based on studies or estimates.**

Training on and dissemination of the Convention

20. The Committee takes note with regret of the information provided by the State party that no training programmes were organized by the State party for public officials working in the area of labour migration at the national and local levels. It is concerned that

information concerning the Convention and the rights enshrined therein is not disseminated among all relevant stakeholders, including national, regional and local government bodies, civil society organizations, and migrant workers, as well as members of their families.

21. **The Committee recommends that the State party develop continuing education and training programmes on the Convention and that such training be made available to all officials and others who work in migration-related areas. The Committee also recommends that the State party ensure that migrant workers have access to information about their rights under the Convention, and that the State party work with civil society organizations to disseminate information on the Convention and promote its implementation.**

Corruption

22. While welcoming the progress achieved by the State party in combating corruption, the Committee is concerned that the level of corruption remains high.

23. **The Committee recommends that the State party take more effective measures to address all instances of corruption relating to migrant workers and members of their families, and undertake appropriate inquiries into allegations of corruption. The Committee also recommends that the State party conduct information campaigns with a view to encouraging migrant workers and members of their families who claim to be victims of corruption to report the corruption, and raise awareness among migrant workers and their families as to which services are free of charge.**

2. General principles (arts. 7 and 83)

Non-discrimination

24. While noting that, pursuant to the State party's Constitution (art. 16, para. 2) and the act on the legal status of foreign nationals (art. 3), migrant workers have equal rights with citizens of the State party, the Committee is concerned by information that migrant workers, in particular undocumented and irregular migrant workers, and members of their families, may in practice suffer from various forms of discrimination, in particular in the areas of employment, education and health.

25. **The Committee recommends that the State party:**

(a) **Ensure that all migrant workers and members of their families, both in regular and irregular situations, within its territory or subject to its jurisdiction enjoy, without discrimination, the rights recognized by the Convention, in accordance with article 7 thereof, both in law and in practice;**

(b) **Increase its efforts by promoting information campaigns for public officials working in the area of migration, especially at the local level, and for the general public on the elimination of discrimination against migrant workers and members of their families.**

Right to an effective remedy

26. The Committee notes the information provided by the State party indicating that migrant workers have the same right to redress as the State party's nationals. The Committee, however, is concerned that no information has been provided on the number of cases or proceedings brought by migrant workers and members of their families, including those in an irregular situation, which may reflect a lack of information provided to them by the State party on their rights and the legal remedies available to them.

27. **The Committee recommends that the State party ensure that, in law and in practice, migrant workers and members of their families, including those in an irregular situation, have opportunities equal to those of nationals of the State party to file complaints and obtain effective redress in the courts in cases where their rights under the Convention are violated. The Committee also recommends that the State party take additional measures to inform migrant workers and members of their families, including those in an irregular situation, about the judicial and other remedies available to them in the event of a violation of their rights under the Convention.**

3. Human rights of all migrant workers and members of their families (arts. 8–35)

28. The Committee notes the progress made in improving and broadening the State party's consular services through the adoption of consular protocols for assisting and protecting the rights of migrant workers in transit and in the country of destination. The Committee, however, is concerned by the lack of information on whether human and financial resources made available to the State party's consulates in Kazakhstan and the Russian Federation are sufficient for the consulates to provide migrant workers with proper assistance and protection. It is also concerned at the lack of female officers deployed to work in the State party's consular services.

29. **The Committee recommends that the State party take the steps necessary to ensure that its consular services can meet effectively the needs of Kyrgyz migrant workers and members of their families in terms of protecting their rights and providing them with assistance. Those steps should include the allocation of sufficient human resources and funding and the development of continuing training programmes, including gender and children's rights awareness training for consular officials in the context of the Convention and other human rights treaties.**

30. The Committee notes the measures taken to ensure that migrant workers and members of their families have access to health services. It is concerned about the lack of information on specific programmes to guarantee access to emergency medical care for migrant workers and members of their families, in particular those who are in an irregular situation in the territory of the State party.

31. **The Committee recommends that, in accordance with article 28 of the Convention, the State party adopt practical and effective measures to ensure access to emergency medical care for all migrant workers and members of their families.**

32. The Committee notes the measures taken to ensure that children of migrant workers and members of their families have access to education. It is concerned about the lack of information on specific programmes to guarantee access and open up education to migrant workers and members of their families who are in an irregular situation in the territory of the State party.

33. **The Committee recommends that, in accordance with article 30 of the Convention, the State party adopt practical and effective measures, for example through specific programmes, to ensure that children of migrant workers, especially those in an irregular situation, have access to and can remain in the education system.**

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36–56)

34. The Committee is concerned about the lack of standard pre-employment and pre-departure orientation at the employment centres established by the Ministry of Labour, Migration and Youth.

35. **The Committee recommends that the State party take appropriate measures to disseminate information on the rights of migrant workers under the Convention, on the conditions of their admission and employment and on their rights and obligations under the law and practice of States of employment. The Committee also recommends that the State party develop targeted pre-departure and awareness-raising programmes, including in consultation with relevant non-governmental organizations, migrant domestic workers and their families, and recognized and reliable recruitment agencies.**

36. The Committee notes the efforts of the State party to facilitate the right to vote by opening polling stations in cities in the Russian Federation. It is, however, concerned at the low level of involvement of Kyrgyz migrant workers abroad during the 2010 parliamentary elections owing to the insufficient number of polling stations.

37. **The Committee recommends that the State party strengthen its efforts to guarantee the right to vote of Kyrgyz migrant workers living abroad by facilitating their registration and participation in the next national elections.**

38. While noting that the principle of equality is applied to frontier and seasonal workers in accordance with the State party's legislation, the Committee notes with concern that frontier workers employed in the State party's territory do not enjoy in practice the same rights as the national workers, as their remuneration is often unregulated and they do not have contracts, which makes them vulnerable to exploitation and discrimination.

39. **The Committee recommends that the State party take the measures necessary to ensure that frontier workers enjoy the same rights as the national workers, and invites the State party to provide information in its next periodic report on the measures taken to ensure that frontier and seasonal workers may enjoy the rights to which they are entitled by reason of their presence and work in the territory of the State party, in accordance with article 57 of the Convention.**

5. Promotion of sound, equitable, humane and lawful conditions in connection with the international migration of workers and members of their families (arts. 64–71)

40. The Committee is concerned about reports that Kyrgyz migrant workers and members of their families face discriminatory attitudes and are often targets of hate crimes and xenophobic assaults in the main countries of employment, in particular in the Russian Federation. The Committee is particularly concerned that Kyrgyz migrant workers are frequently subjected to violence, abuse, threats and intimidation by employers, public officials and private individuals in countries of employment.

41. **The Committee recommends that the State party provide consular assistance to Kyrgyz migrant workers who are victims of discrimination and violence, to protect their rights and interests in the countries of employment with a view to promoting the investigation, prosecution and sentencing of perpetrators of crimes against them. It also recommends that the State party raise awareness among its nationals about the potential risks of migration.**

42. The Committee notes the efforts of the State party to combat human trafficking in its territory. It is, however, concerned about the persistence of human trafficking in the State party and about the lack of data on the scale of the phenomenon, in particular on the number of cases involving women and children.

43. **The Committee recommends that the State party:**

(a) **Implement effectively the programme to combat trafficking in persons for 2013 to 2016, ensuring its full compatibility with the Convention;**

(b) **Evaluate the phenomenon of trafficking in persons and systematically compile disaggregated data to better combat trafficking in persons, especially of women and children, and to bring perpetrators to justice;**

(c) **Afford protection and assistance to all victims of human trafficking, particularly by providing shelters, medical care, psychosocial support and other measures to assist in their reintegration into society;**

(d) **Strengthen training for law enforcement officials, judges, prosecutors, labour inspectors, teachers, health-care workers and the staff of the State party's embassies and consulates, and disseminate more widely information on trafficking in persons and on assistance for victims.**

6. Follow-up and dissemination

Follow-up

44. **The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up on the recommendations contained in the present concluding observations. The Committee recommends that the State party take all appropriate measures to ensure that those recommendations are implemented, including by transmitting them for consideration and action to members of the Government and the parliament, as well as to local authorities.**

45. **The Committee requests the State party to involve civil society organizations more closely in the implementation of the recommendations contained in the present concluding observations.**

Follow-up report

46. **The Committee requests the State party to provide, within two years, that is, by 24 April 2017, written information on the implementation of the recommendations contained in paragraphs 27, 29, 31 and 33 above.**

Dissemination

47. **The Committee also requests the State party to disseminate the Convention and the present concluding observations widely, including to public agencies, the judiciary, non-governmental organizations and other members of civil society, so as to increase awareness thereof among judicial, legislative and administrative authorities, civil society and the public in general.**

7. Technical assistance

48. **The Committee recommends that the State party avail itself of international assistance, including technical assistance, to develop a comprehensive programme for the implementation of the above-mentioned recommendations and the Convention as a whole. The Committee also calls upon the State party to continue its cooperation with specialized agencies and programmes of the United Nations system.**

8. Next periodic report

49. **The Committee requests the State party to submit its second periodic report by 24 April 2020 and to include therein information on the implementation of the present concluding observations. Alternatively, the State party may follow the simplified reporting procedure, whereby the Committee draws up and adopts a list of issues that is transmitted to the State party prior to the submission of its next report. The replies**

of the State party to that list of issues will constitute its report under article 73 of the Convention. In that way, the State party does not submit its report in the traditional manner. This new optional procedure was adopted by the Committee at its fourteenth session in April 2011 (see A/66/48, para. 26).

50. **The Committee draws the State party's attention to its harmonized treaty-specific guidelines (CMW/C/2008/1) and reminds it that periodic reports should be in compliance with the guidelines and not exceed 21,200 words (see General Assembly resolution 68/268). In the event that a report exceeding the established word limit is submitted, the State party will be asked to shorten the report in accordance with the above-mentioned guidelines. If the State party is not in a position to review and resubmit the report, translation of the report for purposes of examination by the treaty body cannot be guaranteed.**

51. **The Committee requests the State party to ensure the wide participation of all ministries and public bodies in the preparation of its next periodic report (or replies to the list of issues prior to reporting, in the case of the simplified reporting procedure) and, at the same time, to consult broadly with all relevant stakeholders, including civil society, migrant workers and human rights organizations.**

52. **The Committee invites the State party to submit an updated common core document, not exceeding 42,400 words, in accordance with the requirements in the harmonized guidelines on reporting under the international human rights treaties, including the guidelines on a common core document and treaty-specific documents approved at the fifth inter-committee meeting of the human rights treaty bodies in June 2006 (see HRI/GEN/2/Rev.6, chap. I).**